

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RICARDO MADRIGAL,

Plaintiff,

v.

L.W. RYDER, JR., et al.,

Defendants.

CASE NO. C04-2550C

ORDER

This matter has come before the Court on Plaintiff's motion for a bench trial (Dkt. No. 49). Defendants filed their jury demand in this matter in March of this year, together with their answer.

Rules 38 and 39 of the Federal Rules of Civil Procedure govern how parties may obtain a jury trial. Rule 38 states that "[a]ny party may demand a trial by jury of any issue triable of right by a jury." Rule 39 states that

[w]hen trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties . . . consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States.

The complaint in this matter is a civil rights complaint by a prisoner under 42 U.S.C. § 1983. (Dkt. No. 7.) In the Ninth Circuit, plaintiffs who bring an action at law under § 1983 have the right to a

1 jury trial. *Del Monte Dunes at Monterey, Ltd. v. City of Monterey*, 95 F.3d 1422, 1427 (9<sup>th</sup> Cir. 1996).

2 Therefore, the action at bar falls within the ambit of Rule 38 and Defendants properly submitted a jury  
3 demand pursuant to the provisions in the rule.

4 Pursuant to Rule 39, once a proper jury demand has been made, the action, if tried, will be tried  
5 by a jury unless the parties agree and consent otherwise or unless the Court finds that no right to a jury  
6 trial exists. Neither of these circumstances apply here. For this reason, Plaintiff's motion for a bench trial  
7 must be DENIED.

8 SO ORDERED this 9th day of August, 2005.

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12 UNITED STATES DISTRICT JUDGE  
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